Supreme Court, U.S.
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No. 94-313

In The

Supreme Court of the United States

October Term, 1994

AUTO CLUB INSURANCE ASSOCIATION,

Petitioner,

v.

WHITE & WHITE, INC.,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Michigan

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether this Court should deny certiorari to the Michigan Supreme Court which ruled that a coordination of benefits provision in a self-funded ERISA plan prevails over a coordination of benefits provision in a Michigan state no-fault automobile policy?

PARTIES

Respondent, White & White, Inc., is a company which was purchased by Stuart's Drug. Stuart's Drug has subsequently been acquired by Owens & Minor.

OPINIONS BELOW

The order of the Michigan Supreme Court denying Petitioner, Auto Club Insurance Association's, delayed application for leave to appeal is reported at 445 Mich. 914 (1994). The order of the Michigan Court of Appeals peremptorily affirming the trial court is unreported. The trial court judgment is also unreported. The decisions and orders are attached as exhibits to the Petitioner's Writ in this action.

SUMMARY OF ARGUMENT AND ARGUMENT

Little time needs to be or should be spent on replying to the Petition for a Writ of Certiorari in this action. This very Petitioner sought a Petition for a Writ of Certiorari to the Michigan Supreme Court in an *identical* case in the case of *Auto Club Insurance Association, Petitioner v. Pentwater Wire Products, Inc.*, 443 Mich. 358; 505 N.W.2d 820, *reh. den.* 444 Mich. 1202; 509 N.W.2d 156 (1993); *cert. den. sub. nom. Auto Club Insurance Association v. Pentwater Wire Products, Inc.*, ___ U.S. ___; 114 S. Ct. 1300 (1994).

Therefore, this Court has previously decided that certiorari should not be granted to review the issues in this case. Nothing has changed since that decision was issued on March 21, 1994.

The issue in this case is unique to the state of Michigan because the coordination of benefits provision in the automobile policy issued by Petitioner is pursuant to a specific Michigan statutory requirement.

In addition, the Court should note that there is no basis for the Petitioner's attempt to argue that there is a conflict between the Sixth Circuit's decision in *Auto-Owners Insurance Company v. Thornapple Valley, Inc.*, ___ F.3rd ___ (6th Cir. 1994) (1994 W.L. 394086) and the Seventh Circuit's decision in *Winstead v. Indiana Insurance Company*, 855 F.2d 430 (7th Cir. 1988), *cert. den.* 488 U.S. 1030 (1989). The Sixth Circuit's decision in *Auto-Owners, supra,* is in accord with and reaches exactly the same result as the Michigan Supreme Court did in the present case, again under identical facts. The primary case relied upon both by the Michigan Supreme Court and the Sixth Circuit in *Auto-Owners, supra,* is this Court's case on ERISA preemption of *FMC Corp. v. Holiday*, 498 U.S. 52 (1990). The *Winstead* case was decided before this Court's decision in *FMC v. Holiday, supra.* The *Winstead* court relied upon pre-*FMC Corp. v. Holiday* law. Therefore, there are no inconsistencies among the federal circuit courts regarding the issue in this case.

CONCLUSION

This Court should deny the Petition for Writ of Certiorari. As this Court has just recently determined in an identical case, none of the considerations set forth in Rule 10 of the Rules of the Supreme Court are satisfied by Petitioner.

Respectfully submitted,

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Dated: September 12, 1994.